

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0103, State of New Hampshire v. Michael Caico, the court on December 5, 2006, issued the following order:

The State appeals an order of the trial court dismissing with prejudice an indictment charging the defendant, Michael Caico, with violating RSA 649-B:4, I (Supp. 2005). The State argues that the trial court erred in finding the indictment insufficient and in dismissing it with prejudice. We reverse in part.

The indictment charged the defendant with “knowingly utiliz[ing] a computer on-line or Internet service to attempt to seduce, solicit, lure or entice” the victim. We will assume without deciding that the indictment was insufficient.

The State also argues that the trial court’s decision to dismiss the indictment with prejudice was error. The sanction of dismissal with prejudice is reserved for extraordinary circumstances. State v. Cotell, 143 N.H. 275, 281 (1998). In this case, no evidence was presented that the State had engaged in misconduct. See, e.g., State v. Janvrin, 121 N.H. 370, 371-72 (1981). Indeed, the only factor cited by the trial court in support of its order was attributable to the defendant’s decision to delay filing his motion to dismiss, a factor not within the control of the State. We therefore reverse that portion of the trial court’s order that dismissed the indictment with prejudice.

Reversed in part.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**